

Arlington Conservation Commission
DRAFT Minutes
September 28, 2017

Mr. Stevens called the meeting to order at 7:43 p.m. in the second floor conference room of the Town Hall Annex. Present were Commission Members Nathaniel Stevens, David White, Mike Nonni, Curt Connors, Janine White, Charles Tirone, Susan Chapnick, Catherine Garnett, and Conservation Agent, Lela Shepherd were present. Also present were Laura Kiesel, Colin Blair, Scott Seaver, Mary Trudeau, Peter Musial, Alice Trexler, Bill Winder, Kevin Thibodeau, Brad Barber, Maulik Majmundjar, Peter Durning, Elizabeth Pyle, and Megan Burns.

Administrative:

Approve 8/2/17 Minutes

D. White motioned to approve the 8/2/2017 Minutes, C. Tirone seconded the motion, all were in favor, motion passed.

Vote to approve invoice from Nobis Engineering – 88 Coolidge Rd

The second of two invoices was received on 9/5/2017 for a bill date of 8/29/2017 for peer review work for the 88 Coolidge Road Notice of Intent. The total owed to Nobis is \$5,000.00; this second bill is for the remaining balance of \$3,496.04. S. Chapnick made a motion to approve payment of the invoice, J. White seconded, all in favor, none opposed, motion passed.

MWRA Boring Program

MWRA is proposing the replacement of 50,000 feet of pipe, which would require 3 exploratory borings within the FEMA 100 year floodplain.

D. White moved to approve the borings without requiring a wetlands permit.

S. Chapnick seconded, all were in favor, the boring program approved as proposed.

The Commission also concluded that MWRA will need to appear before the board should any non-exploratory work begin.

J. White commented that MWRA should coordinate with the Algonquin Pipeline Project manager, Gene Crouch, since it may cross into the same boundary.

L. Shepherd stated she would relay this message to both involved parties.

Spy Pond Project

The Commission requested an update and commented that Parks and Recreation should be kept up to speed on new developments, specifically Jon Marshall and Don Vitters.

General Discussion:

Mr. Tirone commented that the Jason Russell house is looking for additional funding. This house is not owned by the Town but a non-profit organization.

Ms. Kiesel-Rat Poison

Ms. Kiesel had appeared in front of the Natural Resource Committee on Beacon Hill regarding alternative pest (rodent) management techniques that avoid the use of toxic black boxes. She gave the following synopsis of her research: exterminators currently use what's called second generation coagulation or "SGARS" rodenticides. This is causing an infestation problem, because it kills the predators as well as the rodents. Raptors bioaccumulate the poison and eventually die from eating the poisoned rodents. Therefore, the rodent population actually increases because of a decrease in predators. Ms. Kiesel has recently noticed a rat infestation in Spy Pond that was never there before. Where she used to see hawks every week, she now only sees them every 5-6 weeks. Cambridge is also facing this problem of hawks being inadvertently poisoned through eating rats that have been intentionally poisoned. She noticed her own housing complex had 20 bay stations for this poison and after presenting her research findings, they are now down to just a handful in her complex. Ms. Kiesel stated that 86% of raptors found dead are due

to these poisons. She has tried to talk to businesses about the issue, but isn't getting anywhere. So she is trying to go to the State and Town level, by starting an education awareness program to phase out these products. Ms. Kiesel then gave examples of how other towns are handling this issue. Somerville started an Integrated Pest Management (IPM) program using rat contraception instead of poison, which decreased the rat population by 80% in their study but does not affect the predators. Somerville also updated their trash can system with rat proof lids. Boston has an IPM program, which attempts to suffocate the rats with dry ice. Ms. Kiesel believes Somerville's strategy is more successful. She will be appearing in front of Friends of Spy Pond Park and Sustainable Arlington for assistance in outreach on this issue. Ms. Kiesel noted that the Arlington Health Board was told to bait the sewers earlier this year, and now Wicked Local is reporting that rat populations have surged in that area, 8 months later. Ms. Kiesel stated that the Arlington Health Board doesn't understand how the bait traps work and what other animals are eating the bait or dying by eating the affected rats.

S. Chapnick asked who was responsible for implementing IPM in Somerville.

Ms. Kiesel responded that she thought it was Public Works and different town departments.

S. Chapnick and N. Stevens said they can weigh in on the wildlife aspect but don't have town-wide jurisdiction, so the Commission could only lend support on a wider initiative.

N. Stevens suggested Ms. Kiesel talk to the Town Manager.

D. White asked if Ms. Kiesel had talked to the Bird Group.

Ms. Kiesel stated she might have, but was unsure, but that she did speak to the Friends of Alewife Brook.

N. Stevens suggested Ms. Kiesel talk to the new State senator as well.

The Commission agreed they would be willing to support her efforts within the Commission's jurisdiction, and will include this item in their next newsletter.

Working Session-47 Spy Pond Lane Mary Trudeau and Scott Seaver, Lots 1 and 2-under agreement

Ms. Trudeau said that the Applicant successfully appealed the Commission's previous denial under the Wetlands Protection Act and received conditions to proceed but did not appeal the Commission's denial under the Town Bylaw before the expiration period. Mr. Seaver would now like to appeal under the Town Bylaw. Mr. Seaver and Ms. Trudeau are appearing before the Commission to discuss under what conditions, if any, they might get a favorable decision under the Town Bylaw.

N. Stevens suggested that the Applicant review the Commission's prior determination for guidance as to what might be needed and he reminded Ms. Trudeau that working session discussions are non-binding and unofficial.

Ms. Trudeau stated that 1) they are not willing to change the footprint of the two houses proposed for these lots since Mr. Seaver had already paid an architect to design them and 2) they are willing to significantly modify the 0 to 50 foot buffer zone by proposing that the 25 foot buffer zone would be filled completely with native vegetation to the shoreline, and the following 25 feet would decrease the lawn and provide a thicket and shrub vegetation, to provide an additional barrier. She said they would likely propose a shared access path to the water.

N. Stevens asked to be reminded of what was previously proposed.
Ms. Trudeau stated that Lot 2 has the existing house.

C. Tirone asked how far the edge of pond is to the leading structures.

Ms. Trudeau commented that the proposed deck would be 52 feet from the edge of the pond, and that they have been discussing a rain garden or a more formal stormwater system in the 50 foot buffer zone, to mitigate runoff concerns.

Ms. Trudeau commented that if the Commission doesn't want the roof runoff infiltrated into structures, a more bio-treatment alternative could be used.

C. Tirone asked if that would be for the entire undeveloped area.

Mrs. Trudeau responded that it would be located opposite of the berm, akin to a swale with overland flow.

C. Tirone asked if it would work to pass over the sewer easement.

Ms. Trudeau responded it would likely be a level spreader, but it hasn't been designed yet. Instead of having a shrubby lawn area, there would be engineered soils and natural vegetation.

C. Tirone, asked again if it would cover the entire 52 foot area.

Ms. Trudeau stated that she thinks there are alternatives.

C. Tirone commented that he would like to see that system nearer to the pond. He would like to see a little bit of infiltration through a catch basin and rain garden.

N. Stevens cautioned Ms. Trudeau from taking only one persons opinion, and to wait to hear from the whole Commission.

S. Chapnick stated she is not sure that any type of mitigation is going to be enough to deal with the fact that the house is too large for the lot.

Mr. Seaver stated that he is going forward with these building footprints, but they are willing to improve the project through various mitigating features, but that the footprint is not going to change. They represented that for various financial reasons, they cannot go with a smaller design for either house. They have explored a lot of different avenues, including moving the house closer to the street, but it didn't work.

C. Connors asked about what the procedure is for refiling following a denial.

N. Stevens stated there is nothing explicit in the Commission's regulations for refiling under the Town Bylaw, but that there is a multiple filing policy under DEP.

Ms. Trudeau stated their logic for refiling at all is because they didn't appeal in the requisite time, they are trying to reclaim their right to appeal.

J. White commented that the Commission would want the rain garden farther from the pond so rain runoff has a farther distance to travel.

D. White stated he still has an issue with the size of the footprint.

M. Nonni stated he would welcome seeing any new mitigation but the footprint is still an issue for him.

C. Garnett stated that the Commission cannot take financial arguments into account.

C. Tirone requested the Applicant restate why a redesign isn't possible, beyond cost.

Mr. Seaver explained that he has side setbacks and an easement, must fit a 2 car garage, 3 bedrooms, a family room, and there are height issues, stating that in Winchester he is allowed 40 feet height but in Arlington only 30 feet.

C. Tirone asked if the single car garage is not possible solely because they need to recoup the financials.

S. Chapnick clarified why they are refiling.

**Working Session 69 & 73 Henderson St.
Kevin Thibodeau and Bill Winder**

Mr. Winder stated that these adjacent lots are 40 feet wide and in the floodplain.

C. Tirone asked about the depth of the lot.

Mr. Winder responded that one lot is about 180 feet and the other almost 208 feet, and that the plan is to add to each of the houses in the backyard towards the brook.

N. Stevens explained that the Commission has jurisdiction in two ways- with the floodplain, for every cubic foot of fill in the floodplain must be mitigated 2 to1, for compensatory flood storage. For volume, not just square footage, some people let the flood water go through the building like through a deck, there are FEMA standards for this. N. Stevens also commented on the flood insurance issues they will meet. The other jurisdiction is within 200 feet from the bank of the river, and is subject to regulatory standards. N. Stevens suggested a notice of intent for the proposed activity.

C. Garnett noted that elevation is relevant too for surveying the floodplain.

S. Chapnick suggested the Applicants include answers to what are the existing houses and how far they are from the wetlands, what is the distance for the proposal, what is the impervious area, and whether it is possible to put in a pervious surface.

C. Tirone recommended sono tubes to save a lot of headache.

C. Connors said if the Applicants remove the garage they could remove some of the impervious surface and give themselves some credit.

N. Stevens informed the Applicants of the need to file at least 2 weeks before the hearing.

C. Connors asked if the Applicants have ever done a Commission filing before. The Applicant has not.

N. Stevens asked if this part of the brook is culverted.

D. White stated that it is not.

C. Connors noted that a previous, unrelated, Applicant had a wetlands delineation done and then the Commission's Agent disagreed with the line, so it's important to have it done right.

N. Stevens suggested that the Applicants google wetlands scientists as the Commission cannot pick favorites and recommend anyone specific.

S. Chapnick recalled the 111 Sunnyside Avenue project, and recommended that the Applicants refer to that filing in the planning department.

Administrative Business:

- S. Chapnick made a motion to approve the Woods Hole Group Invoice, for a site visit at McClennen Park Detention Basin and document review, in the amount of \$2,922.05. This is within the project scope and budget of \$10,000. D. White seconded, all in favor, motion passed.
- C. Connors moved to approve 9/7/17 minutes, M. Nonni seconded, all in favor, motion passed.
- L. Shepherd gave a report on 36 Peabody Rd. Several neighbors had called the Conservation Agent concerned about the construction which did not have a wetlands permit. L. Shepherd

reviewed the plans and determined no construction would occur within the 100 foot buffer and, therefore, a wetlands permit was not required if the site plans remained the same.

- L. Shepherd inquired about the status of the Land Stewards Program. N. Stevens stated that it is currently dormant and recommended that L. Shepherd find out if interest still exists in past members.
- S. Chapnick gave an overview of Town Day, which she attended. An exercise was given at Town Day which allowed the public to vote on their most important issue out of 5 areas, "natural resources" got the most votes by far.
S. Chapnick also stated that the Conservation Newsletter was well received.
L. Shepherd stated that she sent a description of the Spy Pond Project status to Friends of Spy Pond Park.
C. Garnett asked about putting the newsletter on the webpage.

L. Shepherd will check and post if not currently available.

S. Chapnick suggested we take pictures and do a similar newsletter for the Mystic Riverfront project.

D. White stated that he spent time at the Great Meadows booth on Town Day, and felt that the Commission presence was very low.

C. Connors recommended that the Commission either have its own booth or stop attending Town Day, feeling that subsuming the Commission within the Planning and Community Development booth didn't give the Commission enough of a presence.

Enforcements:

L. Shepherd stated that Enforcement letters were sent out to property owners via certified mail at 104/114 Spy Pond Parkway and would be appearing before the Commission on 10/5/2017.

C. Garnett asked about a case submitted to Eileen Coleman.

N. Stevens stated that particular case had been addressed.

N. Stevens inquired about an unpermitted retaining wall at Hopkins Rd.

L. Shepherd and N. Stevens stated they would look into this.

Working Session-Spy Pond Sandbar Peter Schweich, 252 Pleasant St., & Brad Barber

Mr. Schweich provided photos of the sandbar dated early 2016. The sandbar was above water for an entire year and is growing at a very rapid rate now. Because the sandbar was out of water for an entire year, trees grew on it during a heavy rain period. Mr. Schweich said he called the Conservation Agent last year to ask for assistance with the trees and was told it was not their job and it was his responsibility. He said that removing the sandbar is entirely against his self interest because it serves as habitat for large birds, but he believes it is an environmental embarrassment that a tree in the middle of someone's property is a concern, but that toxic waste dumped in the middle of the pond is not a problem. Mr. Schweich believes it is a matter of credibility to say something to the State and take a stand. The sandbar is so high now that it has created a lagoon.

N. Stevens asked if the pond level has remained the same or if these pictures are from when the pond was lowered.

Mr. Barber responded that it had not been lowered but it was a naturally low rainfall year, so it was lower than normal.

Mr. Schweich stated the area blocked from the pond is turning into a swamp and that garbage is

piling up.

N. Stevens asked if there had ever been dredging in that area.

Mr. Schweich commented that it was done a very long time ago but the trees are too dense to do that now.

S. Chapnick stated that we need to know where the source is coming from or dredging won't matter.

Mr. Schweich suggested that the State move their pipe to another area and start filling that portion of Spy Pond, claiming that all they have to do is to extend another 50 feet, and add some sand to the sandbar and fill the area to create a beach.

N. Stevens asked whether he wanted or did not want the sandbar, and reminded Mr. Schweich about the purpose of a working session.

Mr. Schweich asked if he filled in the area himself he won't be bothered by the Commission.

N. Stevens clarified that was not what he was asking.

C. Garnett stated that there are two issues, (1) the filling in with sand of the area and (2) stopping MassDOT from using this area for stormwater runoff without removing the sand before it reaches Spy Pond, and MassDOT would have to come up with the options to alleviate the situation.

Mr. Barber stated that they need the water as it is the only inflow into the pond.

Mr. Schweich stated that MassDOT just needs a place to dump their water.

N. Stevens stated it is a matter of quantity vs quality, sand is not needed in the water, but clean water is needed by the Pond.

Mr. Barber stated the quantity of sand is much reduced from before, and the sandbar is not growing as fast as it used to be. He was under the impression that measures were taken to completely prevent growth, but it is still growing.

C. Garnett commented that parking lots are regulated, and houses have infiltration systems so it seems like the Commission should regulate the quality of the water, to make sure that its clean.

S. Chapnick commented about how this is what the Commission is doing with the Mystic Valley Pkwy Project, so that only the water percolates down and not the sand, by using gravity and a vortex design, to meet the new stormwater designs that have been delayed another year.

C. Tirone commented that it has become very difficult to remove the phosphorous and maintain the system.

Mr. Schweich stated that the sandbar is under the Commissions jurisdiction according to the State, and he believes that the Commission should find a solution that makes it look less ridiculous.

Mr. Barber stated they have discussed removing the sand but wouldn't know where to put it. He believes Spy Pond needs as much water as it can get and that water runoff from Route 2 is the primary source of new water. He desires some kind of filtration.

N. Stevens stated the reason this hasn't been tackled yet is because it takes the effort of not just the Commission but also to work with: Mass DOT, the Town Manager, the Spy Pond Committee, Friends of Spy Pond Park, and Beacon Hill.

Mr. Schweich asked if the Spy Pond Committee needs permission to remove the sandbar.

N. Stevens stated that they would.

J. White stated that the proper department might not have the funding and ability to remove this themselves.

C. Garnett stated that DCR, for example, has a list of pipes that they have to address. We don't even know if MassDOT has this pipe on a list that has already been studied or is coming up for study.

J. White commented that there is an inventory but not a list of which pipes need to be studied. Mr. Schweich asked if the Commission could just move it 50 feet, so there isn't standing still water with mosquitos in the summer, and place a pipe to connect the area.

N. Stevens confirmed that he was looking for an interim measure.

N. Stevens will contact the Town Manager and try to get this issue moving forward.

S. Chapnick asked if this could be a CPA project for restoration.

C. Garnett believed it to be a stretch for qualifying for their funding.

C. Tirone requested that the Commission get MassDOT to work with the Commission first.

C. Connors stated that this isn't entirely a MassDOT jurisdictional issue.

J. White stated she believed it is a 54 inch pipe and that MassDOT owns about 15 pipes up and down Spy Pond.

J. White suggested they might have better success talking to the local MADOT District Office.

Mr. Barber stated that Brett Loosin was the District contact.

C. Tirone asked if we should talk to Wayne Chouinard from Engineering before talking to the Town Manager, perhaps on the next meeting that everyone is expected in attendance.

Wetlands Regulations

D. White moved to continue revision of wetland regulations to 10/19, C. Connors seconded, all in favor, motion passed.

88 Coolidge-Deliberation on Final Order of Conditions

S. Chapnick stated that page 10 added some language comparing this to 47 Spy Pond Lane, she stated that she believes the Commission shouldn't set a precedent to compare directly to other properties and recommended removing this language from the Order.

C. Connors agreed the Commission shouldn't compare to other projects in its written decisions.

N. Stevens argued that there is a need to show that the decision isn't made arbitrarily and capriciously or it would become a litigation issue.

S. Chapnick asked if it is considered stronger if it is in the Order of Conditions or not for litigation purposes.

N. Stevens stated it is better to have it in the decision.

C. Connors commented on page 12, #30, the first sentence should be deleted.

C. Tirone asked for a timeline, and stated that the Applicant should maintain erosion control.

J. White suggested changing to: "areas that are disturbed by construction access and activities..."

C. Tirone added "and brought to final grade and reseeded"

N. Stevens asked what if it can't be brought to final grade

J. White stated they wouldn't reseed until at final grade, and they should get to final grade ASAP.

C. Connors asked about the Commission's right to stop by at any point during the project?

S. Chapnick stated she believes the Special Conditions describing the planting and landscaping requirements should all be in one place.

C. Connors was confused by 1 year vs 3, maintenance and transplanting on number 36.

N. Stevens agreed draft condition #36 should be removed entirely.

J. White asked about the pesticides and fertilizers discussed in #36, and asked if it is stated somewhere else. She also agreed to leave a/b/c and move it into #49.

S. Chapnick stated that there was a misunderstanding between 8 inches of crushed stone or minimum of 12 inches at the foundation.

N. Stevens got 8 inches off of the plan, dated 8/7/2017.

S. Chapnick commented that the Nobis report stated 12 inches, and the Applicant adopted all of Nobis' recommendations, so now there is an inconsistency.

C. Tirone suggested leaving it at 12 inches and if it's incorrect the Applicant can come back for a plan adjustment.

S. Chapnick read her notes from the 8/17/2017 public meeting recording, stating 8 inches on the foundation.

N. Stevens stated the house foundation should be 8 inches crushed stone on condition #41 based on the final plan. The Commission agreed to this condition.

J. White asked if the Applicant can get a stamped design.

C. Tirone stated the Commission would approve the plan for its purposes not from an engineering perspective.

J. White stated the stormwater is the concern.

C. Tirone stated if the Commission is not approving it then it isn't part of the conversation.

J. White stated if the Commission approves this project with these conditions then it can deny the plan once finalized.

S. Chapnick asked why the Commission can't just ask for the design to be stamped by a PE within 21 days of start of construction and Commission approval.

N. Stevens stated we should remove #36.

N. Stevens claimed that the environmental monitor would be on site for a longer period of time, sections D and E go to the environmental monitor.

C. Tirone asked if the Commission wanted the Applicant to pay for someone totally different or use their own wetland scientist.

N. Stevens read the conditions which states the environmental monitor will be selected by the Commission.

C. Tirone commented that he was stuck on the word "independent", if the Commission is going to be choosing the environmental monitor, he would want a 21-day start prior to building permit, to have a meeting with 3 applicants and chose the monitor at that time.

N. Stevens stated there is no harm in the applicant making suggestions.

J. White stated independent means simply someone the Commission chooses.

S. Chapnick stated she doesn't have a problem with the Applicant nominating an environmental monitor candidate as long as it is not their decision and the Commission has final say.

D. White commented that he is unsettled by the payment of an independent person by the Applicant.

C. Connors requested the process to stay consistent with peer review.

C. Tirone requested that the Order define when the environmental monitor will be at the site.

N. Stevens made clear when the excavation monitor will be there, and will add "be there for retaining walls" as a stipulation. He then asked how often the Commission wants reporting.

J. White stated weekly, unless there is an issue.

C. Connors stated he doesn't believe there is a need for a report except for at the end of construction, unless something comes up.

S. Chapnick and C. Tirone were in agreement.

S. Chapnick requested weekly reports under same language in statute for the environmental monitor.

N. Stevens asked C. Tirone if daily visits at the site are needed or only after rainfall or after storm events.

C. Tirone stated weekly visits are not frequent enough, the monitor needs to be there a lot, right up until final grade.

J. White asked why.

S. Chapnick stated for erosion control.

J. White suggested twice a week visits.

C. Tirone requested to set a timeframe when the Commission would receive means and methods, and would like this information before the Commission selects the monitor.

C. Connors suggested the language "as directed by the Commission".

N. Stevens wanted it more defined.

C. Tirone asked N. Stevens when he expected the environmental monitor would be on site, listing: erosion control, tree protection, after storms, knowledge of agreement after excavation

D. White and C. Connors suggested after rain or storm events.

J. White suggested a weekly minimum or as suggested by the Commission.

S. Chapnick stated she preferred after rain events.

N. Stevens added rain events of 0.10 inches or more.

N. Stevens asked if the Commission was adding to order #10c.

C. Tirone requested that the environmental monitor check if the depths are correct after excavation and prior to backfilling, and he definitely wants to make sure that the 8 inches of crushed stone in placed is monitored.

S. Chapnick stated the environmental monitor needs to make sure that the planting is done in compliance with the Order, and requested that language be added to the environmental monitor section, getting rid of sections D and E.

N. Stevens asked if the Commission should leave in or take out the comparison to 47 Spy Pond Lane.

N. Stevens stated he would talk to Town Counsel and all agreed to heed Town Counsel's advice.

S. Chapnick requested the removal of draft Order Section M.

S. Chapnick requested that L. Shepherd go through past minutes to get dates for the procedural summary.

Attorney Durning for the Applicant commented that #49/50 which makes reference to invasive species management plan, in the conditions, should have a revised date to 7/24/2017, and requested a definition of the wetlands protection act, as special condition 21 is too open-ended.

Attorney Pyle requested a condition that work cannot begin during the 60 day appeal period.

N. Stevens stated that this is an unusual request, and he has not seen other Commissions do it. The Commission decided not to include it.

Attorney Pyle acknowledged the nature of the request, but made it anyway, and asked if the project will begin before the extension to issue the permit runs out on 9/30/2017.

N. Stevens stated he believed the Applicant had been granted an extension until 10/6/2017. Attorney Durning agreed that he had on behalf of the Applicant.

S. Chapnick requested modification of the order so that it is consistent with this extension.

D. White moved to approve findings and conditions with the changes made this evening under the Wetlands Protection Act, C. Connors seconded, no discussion, all in favor, motion passed.

D. White moved to approve findings and conditions with the changes made this evening under the bylaw, C. Connors seconded, no discussion, all were in favor, motion passed.

Zoning Recodification Working Group:

C. Garnett stated that the inland wetland district and the inland floodplain district are being proposed to be removed from the recodified zoning bylaw because the current local wetland bylaw and state regulations are stricter than what is proposed for the zoning bylaw.

C. Connors suggested that instead of giving approval the Commission states that it does not oppose the recommendation to remove those districts from the zoning code, and nothing has gone to the full board.

C. Connors moved that the Commission issue such recommendation, J. White seconded; motion passed unanimously.

N. Steven motioned to close the meeting, motion passed unanimously.

The meeting was adjourned at 11pm.

Respectfully submitted,

Lela Shepherd
Environmental Planner/Conservation Agent